UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,838	10/24/2003	Galen C. Hunt	MS1-1778US	1011

22801   7590   03/17/2008
LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER
BATES, KEVIN T

ART UNIT	PAPER NUMBER
2153	

MAIL DATE	DELIVERY MODE
03/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 October 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
    closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-47</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-47</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
        application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date <u>11-05,10-06,4-07,7-07,11-07, 2-08</u>.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This Office Action is in response to a communication made on October 24, 2003.

The Declaration has been received on March 19, 2004.

The Information Disclosure Statements received November 14, 2005, October 5,

2006, November 16, 2006, April 27, 2007, July 23, 2007, November 16, 2007, and

February 28, 2008 have been considered.

Claims 1-47 are pending in this application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-24 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. The claims are directed towards a computer

readable media, which in paragraph 153 of the specification "may comprise 'computer

storage media' and 'communications media.'" Communications media is further defined

as "'Communication media' typically embodies computer readable instructions, data

structures, program modules, or other data in a modulated data signal, such as carrier

wave or other transport mechanism." Claims directed towards communication or

transmission media are not statutory.

Claims 25 – 30 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter. The claims are directed towards an

apparatus, which includes some software embodiments. The claims are also directed

towards means for facilitating various operations, where those operations are show in claims 17-24 as capable of being software means. This shows that these claims have at least one embodiment of being software, thus is software per se and not statutory.

Claims 31 – 41 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed towards a server, which includes some software embodiments. The claim further includes a system definition model and a schema, which are also clearly software. These claims have at least one embodiment of being software, thus is software per se and not statutory.

Claim Objections

Claim 39 is objected to because of the following informalities: The claim is missing a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7, 10-22, 24-28, 30-34, 37-45, and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by McNally (6259448).

Regarding claims 1, 17, 26, and 42, McNally teaches a method comprising:

using a system definition model to design a system (Column 6, lines 25 – 33; Column 8, lines 31 – 36);

subsequently using the system definition model to deploy the system on one or more computing devices (Column 8, lines 1 – 12); and

after deployment of the system, using the system definition model to manage the system deployed on the one or more computing devices (Column 10, lines 1 – 25; lines 41 – 45).

Regarding claim 31, McNally teaches a system comprising:

a system definition model applicable across a lifecycle of an application, wherein the lifecycle of the application includes design of the application (Column 6, lines 25 – 33; Column 8, lines 31 – 36), deployment of the application (Column 8, lines 1 – 12), and management of the application (Column 10, lines 1 – 25; lines 41 – 45); and

a schema to dictate how functional operations within the system definition model are to be specified (Column 6, lines 25 – 42).

Regarding claims 2 and 18, McNally teaches a method as recited in claims 1 and 17, wherein the system comprises an application (Column 6, lines 17 – 24).

Regarding claims 3 and 19, McNally teaches a method as recited in claims 1 and 17, wherein the system comprises an environment (Column 6, lines 17 – 24).

Regarding claims 5, 20, 26, 32, and 43, McNally teaches a method as recited in claims 1, 17, 25, 31, and 42, wherein the system definition model includes knowledge describing how to deploy the system on the one or more computing devices (Column 8, lines 1 – 12).

Regarding claims 6, 21, 27, 33, and 44, McNally teaches a method as recited in claims 1, 17, 25, 31, and 42, wherein the system definition model includes knowledge describing how to deploy the system on multiple different computing devices, and wherein the knowledge includes different knowledge describing how to deploy the system on each of the multiple different computing devices (Column 8, lines 1 – 12).

Regarding claims 7, 22, 28, 34, and 45, McNally teaches a method as recited in claims 1, 17, 25, 31, and 42, wherein the system definition model includes constraints that must be satisfied by the one or more computing devices in order for the system to be run on the one or more computing devices (Column 6, lines 56 – 61).

Regarding claims 10, 24, 30, 37, and 47, McNally teaches a method as recited in claims 1, 17, 25, 31, and 42, wherein the system definition model includes knowledge describing how to manage the system after deployment of the system (Column 10, lines 41 – 45).

Regarding claim 11, McNally teaches a method as recited in claim 1, further comprising: during management of the system, using a flow to automatically propagate a configuration change to the system (Column 11, lines 45 – 56).

Regarding claim 12, McNally teaches a method as recited in claim 1, wherein the system is deployed to an environment on the one or more computing devices, the method further comprising, prior to the design, deployment, and management of the system: using another system definition model to design the environment; subsequently using the other system definition model to deploy the environment on the one or more computing devices; and after deployment of the environment, using the

other system definition model to manage the environment deployed on the one or more

computing devices (Column 8, lines 31 – 36).

      Regarding claim 13, McNally teaches a method as recited in claim 12, wherein

the system definition model for the environment is derived through examination of the

configuration of one or more computing devices (Column 7, lines 34 – 39).

      Regarding claim 14, McNally teaches a method as recited in claim 12, wherein

the system definition model includes constraints that must be satisfied by the

environment in order for the system to be run on the one or more computing devices,

and wherein the other system definition model includes other constraints that must be

satisfied by the system in order for the system to be run on the one or more computing

devices (Column 6, lines 56 - 61).

      Regarding claim 15, McNally teaches a method as recited in claim 1, wherein a

plurality of environments are deployed on the one or more computing devices, the

method further comprising: using a plurality of different system definition models to

design each of the plurality of environments, wherein each of the plurality of

environments is associated with one of the plurality of different system definition

models; using, for each environment, the associated one of the plurality of different

system definition models to deploy the environment; and after deployment, using, for

each environment, the associated one of the plurality of different system definition

models to manage the environment (Column 8, lines 31 – 36; Column 7, lines 26 – 39).

      Regarding claim 16, McNally teaches a method as recited in claim 15, wherein

each of the plurality of environments is layered, and wherein each of the plurality of

environments serves as environment to one other of the plurality of environments or to the system (Column 8, lines 31 - 36).

Regarding claim 38, McNally teaches a system as recited in claim 31, wherein the system further comprises: another system definition model applicable across a lifecycle of an environment, wherein the lifecycle of the environment includes design of the environment, deployment of the environment, and management of the environment; and wherein the schema is further to dictate how functional operations within the other system definition model are to be specified (Column 8, lines 31 – 36; where the reference teaches the reference models are used for each element a "web").

Regarding claim 39, McNally teaches a system as recited in claim 38, wherein the system definition model for the environment is derived through examination of the configuration of one or more computing devices (Column 7, lines 34 – 39).

Regarding claim 40, McNally teaches a system as recited in claim 38, wherein the system definition model includes constraints that must be satisfied by the environment in order for the application to be run on the environment, and wherein the other system definition model includes other constraints that must be satisfied by the application in order for the application to be run on the environment (Column 6, lines 56 – 61).

Regarding claim 41, McNally teaches a system as recited in claim 38, wherein the system further comprises: an additional system definition model applicable across a lifecycle of an additional environment, wherein the lifecycle of the additional environment includes design of the additional environment, deployment of the additional

environment, and management of the additional environment; wherein the additional

environment is layered below the environment; and wherein the schema is further to

dictate how functional operations within the additional system definition model are to be

specified (Column 8, lines 31 – 36; where the reference teaches the reference models

are used for each element a "web").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 8-9, 23, 29, 35-36, and 46 are rejected under 35 U.S.C. 103(a) as

being unpatentable over McNally in view of Weldon (7117158).

Regarding claim 4, McNally teaches a method as recited in claim 1.

McNally does not explicitly indicate using knowledge obtained during

management of the system to design a subsequent version of the system.

Weldon teaches a system of design, deploying and managing a distributed

application (Abstract) that includes using design cycles to use previous versions to

update and create new versions of the system (Column 12, lines 14 - 44).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Weldon's teaching of version tracking in McNally's system to

allow logging multiple versions of the system and allow for more organized system updating.

      Regarding claims 8, 23, 29, 36, and 46, McNally teaches a method as recited in claims 7, 22, 28, 34, and 48.

      McNally does not explicitly indicate wherein the system definition model can be used to check whether the constraints are satisfied by the one or more computing devices during design of the system.

      Weldon teaches the system definition model can be used to check whether the constraints are satisfied by the one or more computing devices during design of the system (Column 5, lines 39 – Column 6, line 24).

      It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Weldon's teaching of testing elements in the design system to allow the designers to determine if the system is operating properly.

      Regarding claim 9 and 35, McNally teaches a method as recited in claims 7 and 34.

      McNally does not explicitly indicate wherein the system definition model can be used to check whether the constraints are satisfied by the one or more computing devices during design of the system and during management of the system.

      Weldon teaches the system definition model can be used to check whether the constraints are satisfied by the one or more computing devices during design of the system (Column 5, lines 39 – Column 6, line 24; Column 10, line 56 – Column 12, line

44, where Weldon teaches the testing process being performed through the lifecycle of the system).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Weldon's teaching of testing elements in the design and management system to allow the designers to determine if the system is operating properly.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571)272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Bates/
Examiner, Art Unit 2153